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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN PAUL MAURER,

Defendant and Appellant.

D058241

(Super. Ct. No. SCD208810)

APPEAL from a judgment of the Superior Court of San Diego County, Charles R. Gill, Judge. Affirmed.

Stephen Paul Maurer, along with William Jeffrey Hutchings and eight codefendants, was indicted on numerous counts of conspiracy to commit grand theft of personal property (Pen. Code,<sup>1</sup> §§ 182, subd. (a)(1); 487, subd. (a)), rent skimming (Civ. Code, §§ 890, 892), and engaging in deceitful practices as mortgage foreclosure consultants. (Civ. Code, § 1695.1.)

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<sup>1</sup> Statutory references are to the Penal Code unless otherwise stated.

A jury convicted Maurer of one count of conspiracy to commit grand theft of personal property. (§§ 182, subd. (a)(1); 487, subd. (a).) The jury found not true an allegation that the value of the property taken exceeded \$100,000. The jury was deadlocked regarding 12 counts against Maurer, and the court declared a mistrial as to those. The court sentenced Maurer to two years in state prison.<sup>2</sup>

Maurer contends there is insufficient evidence to support the conspiracy conviction. Specifically, he argues the conviction must be reversed because no evidence shows he had the necessary intent to commit the crime. We affirm.

## BACKGROUND

### *Prosecution Case Regarding the Overall Conspiracy*

Hutchings set up several companies, including KBS Resources (KBS), and had at least 23 bank accounts associated with those companies. Hutchings held seminars and made numerous false representations while explaining his land grant program to homeowners recruited by his representatives. Specifically, Hutchings claimed the federal government owns all land in California, including the homeowners' properties, having exercised its right of eminent domain over lands the United States obtained from Mexico following the war in 1846. He asserted that United States residents have been putting property in federal land grants for over 200 years and, under those grants, neither the banks (mortgagees) nor the homeowners (mortgagors) own the land; therefore, a mortgage only provides ownership of the house, not the land. According to Hutchings,

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<sup>2</sup> Hutchings was tried separately, and this court affirmed his conviction on over 160 counts. (*People v. Hutchings* (October 18, 2011, D057451) [nonpub. opn.] )

the bank did not own houses it acquired by virtue of a trustee's deed upon sale, and the mortgagor (borrower) could end the mortgage by exercising his or her right to "give away" the deed of trust.

Hutchings explained his program to homeowners as follows: The homeowner gives away the deed of trust to a Hutchings company called Land Grant Services, LLC, which acts as agent or property manager. While the property is in the grant, the homeowner and Land Grant Services each becomes a fifty percent "beneficiary" of the property. Such action stops the foreclosure sale and the enforcement of the lien. Under California law, the bank has four years to try to collect on the mortgage, and if they fail, the bank writes off the mortgage and sends a 1099 tax form to the homeowner, and the mortgage "goes away." At that point, Land Grant Services transfers the property out of the land grant and returns it to the homeowner, thus terminating the agreement with the homeowner.

Hutchings and his representatives provided manuals and seminar presentations assuring homeowners the land grant was superior to other forms of title and prohibited the banks from enforcing their mortgage loans, trespassing on the property, initiating eviction proceedings, or taking any action to defeat the homeowner's possession of the house permanently affixed to the land. Hutchings promised to prepare and file the deeds and other necessary paperwork with the county recorder's office to perfect the land grant once homeowners transferred title to the property to a designee, usually one of Hutchings's companies like KBS. Under a contract between a homeowner and Hutchings or one of his companies, Hutchings or his representatives promised to guarantee legal

assistance throughout the process and forward to the homeowners any paperwork from the mortgagee, including any notices of default, eviction, and sale.

As a prerequisite to enter the program, prospective clients reviewed and signed a contract Hutchings provided, signed the grant deed for their homes over to Land Grant Services, entered into a rental agreement with Land Grant Services, and paid the first month's rent. Hutchings explained it was important they pay the full market rent while the property is in the grant, otherwise banks would try to prove Hutchings's leaseback and purchase is a sham. Hutchings further stated that a house subject to foreclosure could not be sold because of the land grant; therefore, any postforeclosure sale eviction would only be temporary.

In practice, once eviction proceedings commenced, Hutchings did not provide any legal assistance to the homeowners and sometimes advised them to ignore the foreclosure proceedings. Moreover, homeowners were unsuccessful in their attempts to communicate with Hutchings or his representatives. Victims of the conspiracy testified that neither Hutchings nor his representatives ever told them that the program had failed to avert some foreclosures. Further, none of Hutchings's documents that the victims signed conveyed title or thwarted foreclosure like Hutchings or his associates had represented. In the end, none of the victims retained possession of their homes or avoided foreclosure by virtue of Hutchings's program.

April Riel, a forensic accountant, testified there were approximately 64 victims who alleged they had given about \$375,000 to Hutchings's different entities. Regarding a money transfer to Hutchings's bank accounts, she concluded, "there was no reason for

him to utilize four bank accounts in those different ways to facilitate a transfer of [\$]87,000. If he wasn't hiding anything, he would have just transferred [that sum] out of one account directly into the bank." Between January 2007 and June 2008, approximately \$2.5 million was deposited in approximately eight different bank accounts Hutchings controlled, including two KBS accounts. From February to May 2008, Maurer received \$12,402 in payments from Hutchings's entities. Maurer paid \$5,600 to one of Hutchings's bank accounts. Two days after Hutchings was arrested and his bank account was frozen, Maurer wrote checks for a total of \$2,800 that were drawn on Maurer's bank account.

#### *Maurer's Role in the Conspiracy*

It was alleged in the operative third amended indictment that Maurer committed the following acts to further the conspiracy: Between September 2007 and May 2008, Maurer and his codefendants conducted seminars telling prospective clients that federal land grants were legal and would prevent lending institutions from foreclosing on their properties. Between January and March 2008, Maurer recruited victims Michael Williams, Vaelaa Tei and Miguel Calderas into the land grant program, promising them it would stop the foreclosure process. Maurer invited Williams to a land grant seminar that Hutchings conducted, and Maurer also attended that seminar.

Williams testified that in February 2008, his house was in foreclosure and he was in financial trouble; therefore, he contacted Maurer, who explained that Hutchings's program would stop the foreclosure. Maurer's mailings described him as Hutchings's agent, and Williams understood that Maurer received payment for recruiting Williams

into the program. Williams was persuaded to enroll in the program in part because Maurer himself participated in it.

Williams later met Maurer at Hutchings's seminar, where Hutchings reiterated Maurer's explanations about the land grant program to approximately 25 homeowners who had paid a fee to attend, thus demonstrating their commitment to participate in the program. A notary's presence at the seminar reassured Williams feel the program was official; therefore, he quitclaimed his house to KBS and entered into a rental agreement with KBS, thus permitting him to continue living in the house. Williams recalled that Hutchings explained that after seven years, the bank would write off Williams's loan.

In May 2008, Williams was notified that a trustee sale of his house was scheduled for later that month, but Maurer dismissed that notice as the bank's standard operating procedure. Maurer said that he was still living in his own house, despite his having also received notice of a trustee sale. After Williams had paid three months' rent, Maurer still had not sent him documentation showing the land grant had been established; therefore, Williams temporarily suspended his rent payments pending resolution of that matter. Williams asked to speak to Hutchings, but Maurer said he was not immediately available, and promised they would address the matter soon. Maurer suggested Williams go to the county recorder's office to get the land grant, but Williams was displeased, believing Maurer was responsible for getting it. Maurer also told Williams, " 'You are the only client I have who is mentally uncommitted.' " Williams responded that he did not believe mental commitment had anything to do with the program. Eventually, Williams went to the county recorder's office, obtained a copy of the land grant, and resumed paying rent.

Williams paid Maurer \$1,850 per month for rent for four months. Maurer had informed Williams, " 'Since, not all of the steps occur and every case is so different, we are prepared for each move on the part of the lender.' " Nevertheless, Maurer and Hutchings did not prevent the sale of Williams's house at the end of May 2008, and he was required to move out despite his participation in the land grant program.

Two other victims, Calderas and Tei, testified in accord with Williams that Maurer was recommended to them to help reduce their mortgage payments. Maurer explained the program to them and enrolled them without requiring them to attend Hutchings's seminar. Maurer told them he was also enrolled in the program for many years. Maurer said he would handle any problems arising with the bank or the court. But Maurer did not tell them his house had been sold despite his participation in the program. In June 2008, Calderas and Tei received notices of trustee sale of their properties.

Approximately one month after Hutchings was charged with the crimes, Maurer and several other homeowners sent letters expressing support for Hutchings and other defendants, excluding Maurer, who was not yet charged. Maurer's letter stated in part, " 'Please do not prosecute the alleged defendants. My home had no equity, like most homes right now. I was ready to lose my house to the bank, but they gave me a ray of hope, to keep my home and have a slight chance of homeownership again in the future. At this point in time, I am back to the exact position that I was in before I entered into the program with the alleged defendants. I don't feel cheated nor [*sic*] scammed in any way. I am not a victim.' "

## *Defense Case*

Maurer's wife, Allison Maurer, testified that she and Maurer had taken classes on how to become a loan originator, and Maurer had worked with Real Estate Syndication System (R.E.S.S.) in charge of loan origination and refinancing. In 2007, the Maurers owned about seven homes, but the banks were not willing to refinance them. Their church pastor recommended Hutchings to the Maurers, and at the end of 2007, Maurer attended a seminar Hutchings gave. The Maurers enrolled in Hutchings's land grant program. They declared in their 2008 tax returns that they had received \$4,131 in referral fees from KBS. They lost their house to foreclosure in June 2008.

Maurer unsuccessfully moved for new trial on grounds of juror misconduct and inconsistent verdicts.

## DISCUSSION

Maurer contends there is no evidence that he had the specific intent to conspire to commit grand theft or that he agreed to commit a crime.

"In determining whether the evidence is sufficient to support a conviction . . . , 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citations.] Under this standard, 'an appellate court in a criminal case . . . does not ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.' [Citation.] Rather, the reviewing court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is



reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' " (*People v. Vy* (2004) 122 Cal.App.4th 1209, 1224.)

Generally, "[a] conviction of conspiracy requires proof that the defendant and another person had the specific intent to agree or conspire to commit an offense, as well as the specific intent to commit the elements of that offense, together with proof of the commission of an overt act 'by one or more of the parties to such agreement' in furtherance of the conspiracy." (*People v. Morante* (1999) 20 Cal.4th 403, 416.) Conspiracy does not require the actual commission of the crimes that are the object of the conspiracy. (*Id.* at pp. 416-417.) Moreover, it is not necessary that a party to a conspiracy be present and participate in the overt acts that further the conspiracy. (*Id.* at p. 417.)

Under these principles, to establish a conspiracy, "the prosecution need not show that the parties met and expressly agreed to commit a crime. [Citations.] The evidence is sufficient if it supports an inference that the parties positively or tacitly came to a mutual understanding to commit a crime. [Citation.] The existence of a conspiracy may be inferred from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy." (*People v. Cooks* (1983) 141 Cal.App.3d 224, 311 (*Cooks*)). Furthermore, "[o]nce the conspiracy is established it is not necessary to prove that each conspirator personally participated in each of several overt acts since members of a conspiracy are bound by all acts of all members committed in furtherance of the conspiracy. [Citations.] The crime of conspiracy can be committed whether the

conspirators fully comprehended its scope, whether they acted together or in separate groups, or whether they used the same or different means known or unknown to them." (*Id.* at p. 312.)

Maurer contends he acted independently and never intended to agree to participate in a conspiracy, but he acknowledges the following circumstantial evidence arguably points to his participation in the conspiracy: He acted on Hutchings's behalf by recruiting others into the program and receiving referral fees from Hutchings; further, Maurer "was motivated by a desire for personal gain, as arguably evidenced by the fact that he continued to recruit people into the program and failed to timely disclose to them that his own home was not saved by the program." Finally, he knew at some point that the program was not working, having lost his own home to foreclosure. Maurer also argues that just as the jury acquitted him of numerous charges based on insufficient evidence, so too insufficient evidence supported the conspiracy conviction.

The jury reasonably could have concluded that Maurer committed the overt acts alleged against him in the indictment and was guilty of conspiracy based on the following evidence: Maurer was Hutchings's agent and, for a fee, recruited new clients into the program. Maurer explained the program to prospective clients and in some cases recommended that they attend Hutchings's seminar, which he also attended. Maurer told Calderas he had been in the program for several years, and partly on that basis, Calderas was induced to participate in it. Maurer had real estate training and expertise, and the circumstantial evidence supports the inference he knew it was fraudulent to induce the

victims to give away their deeds of trust to Land Grant Services, and Maurer knew that the homeowners risked loss of their property for Hutchings's gain.

Maurer also collected rent from the victims, without using that rent for the stated purpose of helping the individuals defend against foreclosure. For example, Maurer knew Williams's trustee sale on his house was imminent, but reassured Williams such was standard operating procedure and KBS and Hutchings would defend him throughout the process. However, Maurer did not obtain a copy of the land grant for Williams, even after Williams withheld rent to protest such noncooperation. Maurer did not obtain Hutchings's help for Williams. Further, after Hutchings's arrest, Maurer signed a letter defending Hutchings. Because the program did not avert foreclosures, Maurer's defense of Hutchings raised grave doubts about Maurer's reasons for defending him, and suggests that Maurer was covering up Hutchings's wrongdoing and Maurer's criminal liability as a coconspirator.

Maurer argues he too was a victim of Hutchings's criminal conduct and lost his house in the foreclosure; therefore, there is no proof he intended to or agreed to defraud the victims. But that is not the only inference that can be drawn from the fact he lost his house. It is also reasonably inferable he had calculated he could forestall the foreclosure on his house by raising money through his participation in Hutchings's program, or that his loss from foreclosure would be at least partially offset by his earnings from the program. We infer findings to support the judgment. (*People v. Vy, supra*, 122 Cal.App.4th at p. 1224.)

We conclude that in view of Maurer's "conduct, relationship, interests, and activities" with Hutchings, there is ample circumstantial evidence that Maurer "positively or tacitly came to a mutual understanding" with Hutchings to commit the target crime, and that he acted with a specific intent to commit the elements of the target crime. (*Cooks, supra*, 141 Cal.App.3d at p. 311.)

#### DISPOSITION

The judgment is affirmed.

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O'ROURKE, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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McINTYRE, J.